

SOUTH CAROLINA PUBLIC SERVICE COMMISSION**DOCKET NO. 2019-185-E****DOCKET NO. 2019-186-E**

In the Matter of:)	DUKE ENERGY CAROLINAS,
)	LLC'S AND DUKE ENERGY
South Carolina Energy Freedom Act)	PROGRESS, LLC'S FIRST SET
(H.3659) Proceeding to Establish Each)	OF REQUESTS FOR
Electrical Utility's Standard Offer,)	PRODUCTION OF DOCUMENTS
Avoided Cost Methodologies, Form)	AND INTERROGATORIES TO
Contract Power Purchase Agreements,)	JOHNSON DEVELOPMENT
Commitment to Sell Forms, and Any)	ASSOCIATES, INC.
Other Terms or Conditions Necessary)	

Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP") (together, "Duke Energy" or the "Companies"), by and through their legal counsel, pursuant to Rule 103-833(C) of the Rules of Practice and Procedure of the South Carolina Public Service Commission, hereby serves Johnson Development Associates, Inc. ("JDA") with the following First Set of Requests for Production and Interrogatories to be answered under oath on or before twenty (20) days from the date of service.

Further, please take notice that these Requests for Production and Interrogatories are continuing in nature until the date of the hearing, and that any information or responsive materials identified after your responses have been served upon the undersigned counsel should be provided via supplemental discovery responses as soon as possible after such identification.

INSTRUCTIONS

1. Please produce the requested documents as they are kept in the usual course of business or to organize and label them to correspond with the categories in the Request. Documents attached to each other should not be separated.

2. In producing Documents, furnish all documents known or available to you, regardless of whether such documents are possessed directly by you or your agents, employees, representatives, investigators, or by your attorneys. All requests for Documents specifically request documents of JDA as well as Ms. Rebecca Chilton, who you have retained to provide expert testimony in this proceeding.

4. If any document otherwise responsive to any Request was, but is no longer, in your possession, subject to your control or in existence, identify each document by listing its author(s) and addressee(s), date, subject matter, whether the document(s) or copies are still in existence (and if so, their locations and the custodians), as well as whether the document is missing or lost, has been destroyed, has been transferred voluntarily to others, or has been otherwise disposed of. In each instance, explain the circumstances surrounding such disposition and identify the person(s) directing or authorizing its destruction or transfer, and the date(s) of such direction or authorization.

5. If a privilege not to answer a Request is claimed, identify each matter as to which the privilege is claimed, the nature of the privilege, and the legal and factual basis for each such claim.

6. Unless otherwise stated, the relevant time period for these Requests is from January 1, 2019, until the present.

7. Each Request shall be reproduced at the beginning of the response thereto.

8. Please provide copies of the information responsive to each Request in native electronic working format with all data and formulas intact.

9. Please provide responses to the following data requests electronically. To the extent this is impracticable, the responses, including any responsive Documents, should be provided at the offices of Sowell, Gray, Robinson, Stepp & Laffitte, LLC, 1310 Gadsden

Street, Columbia, South Carolina 29201, or some mutually convenient location otherwise agreed to by the parties.

DEFINITIONS

1. **“Commission”** means the Public Service Commission of South Carolina.
2. **“Communication”** means the transmittal of information in the form of facts, ideas, Documents, inquiries, or otherwise, including every discussion, conversation, conference, or telephone call.
3. **“You”** and **“your”** means the Johnson Development Associates, Inc. (“JDA”), JDA’s witness in this proceeding, Ms. Rebecca Chilton, and all of its members, agents, representatives and attorneys.
4. **“Dockets”** means Commission Docket Nos. 201-185-E & 2019-186-E.
5. The term **“document”** is to be construed as broadly as permissible under Rule 34 of the South Carolina Rules of Civil Procedure and includes, but is not limited to, any printed, typewritten, handwritten or otherwise recorded information of whatever character, including, but not limited to, letters, memoranda, notes, diaries, reports, records, calendars, charts, audio and/or video tapes or discs, and photographs; computer programs or disks; electronic media records, however recorded and maintained, including, but not limited to, electronic mail, voicemail messages, digital photographs and electronically scanned records of any type; recorded observations, statements, conversations or formal affidavits. Any carbon or photocopy of any such materials upon which notations have been made and all drafts are also included.
6. **“Person”** means any natural person or any business, legal, or governmental entity or association.

7. The terms “**related to**” and “**relating to**” or any variation thereof shall be construed to include refer to, summarize, reflect, constitute, contain, embody, mention, show, comprise, evidence, discuss, describe, comment on, concerning, regarding, eluding to, pertaining to, probative of, in connection with, dealing with, in respect of, about, involved, identifying or proving.

8. “**Identify**,” when referring to a Person, means to give, to the extent known, the Person’s full name, present or last known address, and when referring to a natural Person, additionally, the present or last known place of employment.

9. “**Identify**,” when referring to Documents, means to give, to the extent known, the (i) type of Document; (ii) general subject matter; (iii) date of the Document; and (iv) authors, addressees and recipients.

10. “**Identify**,” when referring to an oral Communication, means to give, to the extent known, the identity of the speaker and of each Person who was present when the Communication was spoken, and the substance, date, and place of such Communication.

11. “**FERC**” means the Federal Energy Regulatory Commission.

12. “**PURPA**” means Section 210 of the Public Utility Regulatory Policies Act of 1978, 16 U.S. Code § 824a–3, as well as the regulations established by the Federal Energy Regulatory Commission to implement PURPA, 18 C.F.R. 292.101 *et seq.*

INTERROGATORIES

1-1. Please identify all state regulatory proceedings (State, Docket, Date of Testimony) and civil litigation (State, Docket, Date of Testimony) in which JDA witness Chilton has testified in the last five (5) years. For each proceeding or case identified, please provide a brief summary of the testimony identifying whether PUPRA implementation, utility avoided costs, or the commercial reasonableness of power purchase contracts was at issue in the proceeding and, if so, how Ms. Chilton's testimony addressed the issue.

ANSWER:

1-2. Referring to your statement beginning at Page 2, Line 27, that "JDA has qualifying facilities under development, scheduled for future development, planned for possible future development, or otherwise positioned in the interconnection queue of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC," Please:

- a. Identify all such qualifying facilities referenced in this Statement that are owned or controlled by JDA by Project name, FERC Docket Number assigned to the FERC Certification of Qualifying Facility ("QF") Status (FERC Form 556) submission and date of submittal of FERC Form 556 to FERC.
- b. Please identify the earliest date that JDA filed a Form 556 for a QF that is now "under development" by providing the Project name, FERC Docket Number assigned to the FERC Certification of QF Status (FERC Form 556) submission and date of submittal of FERC Form 556 to FERC.

- c. Please identify all qualifying facilities owned or controlled by JDA in South Carolina that have achieved commercial operation and begun selling power to DEC, DEP, or Dominion Energy South Carolina. Please specifically provide the Project name, MWac, interconnecting utility, and date of commercial operation.
- d. Please identify all qualifying facilities previously owned or controlled by JDA in South Carolina that have been sold to another unaffiliated entity, including the date each sale occurred. (The use of “sale” or “sold” in this request is intended to include both assets sales and changes of control of the project LLC owning the development assets.) Please specifically provide the Project name, MWac, interconnecting utility, date transaction closed selling project, and stage of development at time of sale of project.

ANSWER:

1-3. Referring to JDA witness Chilton’s statement beginning at Page 4, Line 10, that “The requirements of PURPA and Act 62 that QF generation must be allowed to compete on even terms with the utility’s other generation resources, both present and projected, implicitly requires that the QF be able to obtain regularly-available, market-rate financing for the costs of developing, building, and operating their projects,” please specifically identify the provisions of PURPA, FERC’s regulations implementing PURPA (18 C.F.R. 292.101 *et seq.*), or Act 62 that you believe establish an obligation for QFs to

“obtain regularly-available, market-rate financing for the costs of developing building, and operating [QF] projects.”

ANSWER:

1-4. Referring to JDA witness Chilton’s statement beginning at Page 4, Line 10, that “The requirements of PURPA and Act 62 that QF generation must be allowed to compete on even terms with the utility’s other generation resources, both present and projected, implicitly requires that the QF be able to obtain regularly-available, market-rate financing for the costs of developing, building, and operating their projects,” please identify:

- a. all other State Public Service Commissions of which you are aware that have previously made a similar determination that PURPA requires utilities to offer and State Commissions to assure that QFs have the right to “regularly-available, market-rate financing for the costs of developing building, and operating [QF] projects.”
- b. all other States which currently meet your recommended standard that PURPA requires utilities to offer and State Commissions to assure that QFs have the right to “regularly-available, market-rate financing for the costs of developing building, and operating [QF] projects.”

ANSWER:

1-5. Please identify the minimum percentages of i) sponsor or owner equity ii) third party tax equity; and iii) debt that JDA witness Chilton believes is reasonably required to be invested in financing the costs of developing, building, and operating a QF project based upon “regularly-available, market-rate financing” of a solar QF project in South Carolina.

ANSWER:

1-6. Referring to your statement beginning at Page 4, Line 28, that “Regularly available” also means that the terms and conditions of the QFs’ revenue and interconnection contracts meet standard underwriting criteria within the mainstream capital markets,” please describe the underwriting criteria and process followed to evaluate the risk, experience, capabilities and creditworthiness of the QF project developer that is requesting financing.

ANSWER:

1-7. Referring to JDA witness Chilton's statement beginning at Page 4, Line 30, that "While it is true that a limited number of QFs have been able to find financing for short term or low price PPAs . . .," please identify all QF projects of which You are aware that have executed a PPA with a tenor of less than 10 years since 2016 and provide: i) year PPA executed; ii) name of project developer/owner of project; iii) name purchasing or off-taking utility; iv) tenor of PPA; v) whether PPA was priced at utility's avoided cost; vii) general explanation of financing of project, including percentage of financing provided by sponsor equity; and vii) current status of project (to your knowledge).

ANSWER:

1-8. On page 6, Lines 14 through 16, JDA witness Chilton states that, "in order to provide QFs with commercially reasonable access to capital that both PURPA and Act 62 compliance mandate, both the PPA pricing and the initial term in combination must be strong enough to attract necessary capital." Is it Ms. Chilton's contention that the Commission's determination of the utility's avoided cost rates under PURPA should take into account whether the avoided cost rates will support the QF accessing capital in order to develop one or more QF projects? Please explain.

ANSWER:

1-9. Referring to JDA witness Chilton's discussion of the "volatility of fuel costs" and trends in "natural gas prices" on pages 6 and 7, does Ms. Chilton agree that the inputs and assumptions relied upon in developing avoided cost rates, such as the forecasted price of natural gas, should be consistent with the utility's forecasts and assumptions relied upon in the integrated resource planning process, which evaluates the utility's future needs for new generating resources generally?

ANSWER:

1-10. Referring to JDA witness Chilton's discussion of DEC's recovery of abandonment costs of the planned Lee Nuclear Station, please explain how Commission authorization of recovery of such costs is relevant to quantifying the costs that DEC avoids by purchasing marginal energy and capacity from a qualifying facility under PURPA. If it is Ms. Chilton's contention that Lee Nuclear Station abandonment costs should be somehow factored into DEC avoided capacity or energy costs calculation, please explain in detail how that should be accomplished.

ANSWER:

1-11. Is it Ms. Chilton's contention that the Commission's determination of the utility's avoided cost rates under PURPA should take into account whether the avoided cost rates will support the QF accessing capital in order to develop one or more QF projects? Please explain.

ANSWER:

1-12. On page 9, beginning at line 20, JDA witness Chilton states that, “I recommend that the Commission set the tenor of length of PPA contracts at a minimum of fifteen (15) years with appropriate conditions as set forth in SC Code Ann. § 58-41-20(F)(1). However, Ms. Chilton does not set forth what “appropriate conditions” JDA believes are appropriate. Please explain.

ANSWER:

1-13. On page 9, beginning at line 20, JDA witness Chilton states that, “I recommend that the Commission set the tenor of length of PPA contracts at a minimum of fifteen (15) years” Please identify any other state in the Southeast that offers contracts greater than ten years in its implementation of the “mandatory purchase obligation” under PURPA. Is Ms. Chilton aware of other States that offer PURPA PPAs at tenors less than 10 years?

ANSWER:

1-14. Please specifically identify the provisions of PURPA, FERC’s regulations implementing PURPA (18 C.F.R. 292.101 *et seq.*), or Act 62 that “require the Commission to drive towards parity between QFs and the utility in financing,” as stated on page 4, lines 17-18 of Ms. Chilton’s testimony.

ANSWER:

1-15. On page 4, lines 19-20, of Ms. Chilton's testimony, she references the "vast array of preferential financing options open to the monopoly utility." Please describe with specificity the "vast array of preferential financing options" to which Ms. Chilton refers in this statement. Please also explain why Ms. Chilton believes these preferential financing options are not available to qualifying facilities in South Carolina.

ANSWER:

1-16. On page 5, lines 7-9, of Ms. Chilton's testimony she references the "commercially reasonable access to capital that Act 62 has set as the standard for treating small power producers on a fair and equal footing with electrical utility-owned resource." Please specifically identify the provisions in Act 62 that set a "standard" of "commercially reasonable access to capital."

ANSWER:

1-17. On page 8, lines 1-2, of Ms. Chilton's testimony she states that "Act 62 expressly encourages this Commission to support longer-term contracts. . . ." Please provide the provisions of § 58-41-20 in Act 62 that expressly encourage the Commission to support longer-term contracts.

ANSWER:

1-18. On page 10, lines 18-20, of Ms. Chilton's testimony, she states that "Duke's low proposed avoided cost pricing for both DEC and DEP coupled with their proposed integration charge . . . does not comply with the requirements of Act 62." Please specifically identify the provisions of § 58-41-20 with which DEC and DEP's avoided cost rates and solar integration services charge do not comply and explain how DEC and DEP's avoided cost rates and solar integrations services charge do not comply with the identified provisions.

ANSWER:

REQUESTS FOR PRODUCTION

1-1. Please produce copies of all data requests, requests for production, interrogatories, or other communications that have been received by JDA in connection with this docket. Please produce these as soon as practicable after they are received. Please consider this an ongoing request.

RESPONSE:

1-2. Please produce copies of JDA's responses to all data requests, requests for production, interrogatories, or any other information provided by JDA in connection with this docket. This includes all documents, electronic files or other attachments that were that were provided, or made available for on-site inspection. Please produce these at the same time they are provided to the requesting party, or if that is impossible, as soon as practicable thereafter.

RESPONSE:

1-3. Please produce copies of all data requests, requests for production, interrogatories, or any other request for information that JDA has served on other parties in connection with this docket. Please produce these at the same time they are served on the other party. Please consider this an ongoing request.

RESPONSE:

1-4. Please produce copies of the responses to all data requests, requests for production, interrogatories, or any other request for information that JDA has served on

other parties in connection with this docket. Please produce these as soon as practicable after they are received. Please consider this an ongoing request.

RESPONSE:

1-5. Please produce any and all documents identified, referred to, or relied upon in preparing your response to Duke Energy's First Set of Interrogatories to JDA.

RESPONSE:

1-6. For the period January 1, 2018 to present, please identify and produce all Documents developed by or in the possession of Ms. Chilton concerning projections of, or reporting of, margins, profits, rate of return, internal rate of return, or return on equity of relating to development of solar QFs in South Carolina.

RESPONSE:

1-7. For the period January 1, 2018 to present, please identify and produce all Documents provided by Ms. Chilton to any current or prospective investor, lender, or tax equity investor, relating to projections of, or reporting of, margins, profits, rate of return, internal rate of return, or return on equity relating to development of solar QFs in South Carolina.

RESPONSE:

1-8. For the period January 1, 2018 to present, please identify and produce all Documents concerning projections of, or reporting of, margins, profits, rate of return,

internal rate of return, or return on equity of relating to JDA's or any of JDA's affiliates development of solar QFs in South Carolina. This request specifically includes any such Documents developed solely for internal use by JDA and its affiliates.

RESPONSE:

1-9. For the period January 1, 2018 to present, please identify and produce all Documents provided by JDA to any current or prospective investor, lender, or tax equity investor, by JDA or any affiliate of JDA relating to projections of, or reporting of, margins, profits, rate of return, internal rate of return, or return on equity JDA's development of solar QFs in South Carolina.

RESPONSE:

Dated this 19th day of September, 2019.

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